

REMARKS/ARGUMENTS

Claims 1, 4-13, and 15-25 are pending in the present application. Claims 1, 7, 8, and 15 have been amended. Claims 2, 3, and 14 were previously cancelled. No new matter has been added.

Support for the claim amendments can be found, for example, in paragraphs [0022]-[0029] and FIGS. 1-4 of pre-grant publication no. US 2007/0031960.

Amendment to the Title

In the Amendment and Request for Reconsideration filed on August 11, 2009, Applicant amended the title to recite, "Optical Format With Platform-And-Well Construction". The Applicant respectfully requests confirmation that the amended title has been entered.

Obviousness Rejection of Claims 1, 4-13, and 15-25 Based on Husar

In the October 29, 2009 non-final Office action ("Office Action"), claims 1, 4-13, and 15-25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Husar US 2002/0061260 ("Husar"). These rejections are respectfully traversed.

The Office Action improperly combines several embodiments from Husar, and then relies on erroneous design choice arguments to reject the pending claims. That is, the rejection combines one element from the embodiment illustrated in Husar's FIG. 1 with several elements from the embodiments illustrated in Husar's FIGS. 13 and 14. More specifically, the Office Action identifies a cover sheeting 3 (analogized to "first format member") from FIG. 1 and combines this embodiment with volume receiving part 2^{IV} (analogized to "second format member"), middle well portion 4^{IV} (analogized to "well"), right most well portion 4^{IV} with nozzle portion 6^{II} (analogized to "sample fill nose"), left-most well portion 4^{IV} (analogized to "vent"), and a transition portion 10 (analogized to "vent opening") from FIG. 14. (*See* Office Action, at 2). The Office Action generally **acknowledges that Husar fails to explicitly disclose a platform extending from an inner surface of the first format member.** (*See* Office Action, at 3). To overcome Husar's stated deficiencies, the Office Action improperly relies on structural elements 32 illustrated in FIG. 13 as supporting an obvious engineering design choice for placing the disclosed structural elements 32 from FIG. 13 onto cover sheeting 3 from FIG. 1. (*See* Office

Action, at 3). For reasons discussed further below, Husar fails to disclose or suggest the presently claimed invention.

Husar describes a device for handling liquid samples, particularly for sample volumes of about 0.001 microliters and greater. (See ¶[0018]). Husar's device is disposable and may serve as a reaction vessel for liquid samples and/or reagents and as handling apparatuses for optical measurement. (See ¶¶ [0070]-[0075], [0196]). Husar describes various structural elements which can be formed in order to **increase the surface and/or stimulate turbulence and/or produce a shear force on a wall of a well** of a disposable. (See ¶[0187]). Husar then states a disposable the well of which is provided with such **structural elements 32^I to 32^{VI} may be used to thoroughly mix a sample liquid** by introducing one or more pressure surges into the sample liquid by means of a displacement device (or an actuation device). (See Husar ¶[0189]). Husar further describes that several elements of one of the types shown (i.e., structural elements 32^I to 32^{VI}) or several types are **preferably produced at the bottom of the well** of one of the explained volume receiving parts (e.g., FIG. 14). (See Husar ¶[0187]).

Husar fails to disclose the claimed invention in at least two ways. First, Husar suggests the structural elements, which are improperly alleged by the Office action to be platforms, are produced on the bottom of the well. Thus, Husar fails to suggest, and rather appears to **teach away** from, the structural elements being a platform extending from an inner surface of the first format member. Second, Husar's teaching that the structural elements mix sample liquid and stimulate turbulence supports its teaching of the elements being present on the bottom of the well, not a well being shaped to accept a platform.

Furthermore, Husar's disclosure of structural elements is not for the purpose of controlling a sample testing region volume, or for forming or defining a sample testing region having a predetermined volume. Rather, Husar explicitly states that its structural elements "increase the surface and/or stimulate turbulence and/or produce shear force on a wall of a well". (See ¶[0187]). That is, the purpose of Husar's structural elements are to mix a sample liquid and cause turbulence in the well, rather than controlling or defining a sample testing region volume.

The specification of the present application provides further support for the non-obviousness of the claimed invention based on Husar. Exemplary aspects from the specification describe a well and sample fill nose being sized to enable optimum fluid transport to the well (*see* US 2007/0031960, at ¶ [0021]), or a vent serving to ensure capillary movement of a sample and providing an area for sample overflow (*see* US 2007/0031960, at ¶[0025]). Furthermore, the specification describes that in order to increase the accuracy of optical sample testing, it is desirable to provide an improved optical format. (*See* US 2007/0031960, at ¶ [0004]). The specification also describes that formats resulting in improper control of sample volume decrease the accuracy of many prior art optical systems. (*See* US 2007/0031960, at ¶ [0003]). That is, the present application is directed to increasing the accuracy of optical testing over the prior art formats, such as Husar, by controlling sample volume. These exemplary descriptions are suggestive of non-turbulent flow. The pending claims recite:

- (i) “said platform and well configured to control said sample testing region volume”;
- (ii) “said well being shaped to accept said platform of said first format member within said well thereby forming a sample testing region configured to receive a predetermined sample volume”;
- (iii) “inserting said platform of said first format member into said well of said second format member, thereby forming a sample testing region configured to hold a predetermined volume”; or
- (iv) “said well and said platform defining a sample testing region configured receive a predetermined sample volume”.

For at least these reasons, Husar does not and cannot disclose or suggest claims 1, 4-13, and 15-25, and thus, the rejection of these claims should be withdrawn and the claims should be allowable.

CONCLUSION

The Applicant submits that claims 1, 4-13, and 15-25 are in condition for allowance and action toward that is respectfully requested. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (312) 425-8552.

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It is believed that no additional fees are due except for the extension of time fee; however, should any additional fees be required (except for payment of the issue fee) or credits for overpayment be due, the Commissioner is authorized to deduct the fees from, or credit the overpayments to, the Nixon Peabody Deposit Account No. 50-4181, Order No. 247082-000093USPX.

Respectfully submitted,

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